HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No. 37 of 2020

14th November, 2025

Magma H.D.I. General
Insurance Company Ltd. -Appellant

Versus

Smt. Niharika Uniyal
And Others -Respondents

Presence:-
Mr. Pramod Bailwal, Advocate for the appellant.
Mr. Piyush Garg, learned counsel for respondent nos. 1 and 2.
Mr. Priyanshu Gairola, learned counsel for respondent nos. 4 and 5.

Hon'ble Alok Mahra, J.

This appeal from order has been preferred by the Insurance Company challenging the judgment and award dated 28.09.2019 passed by the learned Motor Accident Claim Tribunal/VIII Additional District Judge, Dehradun in Motor Accident Claim Case No. 72 of 2016.

2. The ground raised in the appeal by learned counsel for the appellant/Insurance Company is mainly that business income of the deceased (husband of the claimant) was shown from the income of the medical store, which he was running prior to his death and there

is no document or record in the file, which would prove that the medical store has been closed after the death of the deceased. In support of his contention, learned counsel for the appellant has relied upon a judgment passed by Hon'ble Apex Court in the case of **Sushma H.R. and Another Vs. Deepak Kumar Jha and Others** reported in **2022 Supreme (SC) 1786,** wherein the Hon'ble Apex Court, in its paragraph 6, has held as hereunder:-

> "6. On this aspect it is true that there is no material on record to indicate that the Bakery business which was being run during the life time of the deceased has been closed after his death. Even if that aspect of the matter is kept in view, there is also no contrary material on record to indicate that the appellants herein who is a young lady and minor son are well versed in Bakery business. In that light keeping in view the young age of the appellants without experience, it cannot be expected that the Bakery can be run by them in the same manner as it was being run by the deceased nor is there definite evidence on record in this regard."

3. In the aforesaid case, income of the deceased was from the bakery shop and the Hon'ble Apex Court held that there was no evidence on record to show that the bakery shop was closed after death of the deceased and further held that even assuming bakery shop was closed after the death of the deceased, there is no material to show that the appellant, who was a young lady or minor son were well-versed in the bakery shop. It was further held that that even if the bakery business is running, then due to the death of the husband and in

absence of his expertise, it would cause a loss of 50% of the income, as appellants could not run the business in the same manner, as it was being run by the deceased. Therefore, only 50% of the income from the bakery was directed to be computed as income of the deceased.

4. Learned counsel for the appellant/Insurance Company has further relied upon a judgment passed by the Hon'ble Apex Court in the case of New India Assurance Co. Ltd. Vs. Yogesh Devi and Others reported in 2012 (2) Supreme 284. Paragraph 11 and 12 of the judgment are extracted hereinbelow:-

> "11. Coming to the case on hand, the claim is based on the assertion that the deceased owned agricultural land apart from the abovementioned three mini-buses. The High Court rejected the claim insofar as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family. Unfortunately, the High Court failed to see that the same logic would be applicable even to the income from the abovementioned three buses. The asset (three mini-buses) would still continue with the family and fetch income. The only difference, perhaps, would be that during his life time the deceased was managing the buses, but now, the claimants may have to engage some competent person to manage the asset, which, in turn, would require some payment to be made to such a manager. To the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset. Therefore, the amount required for engaging the service of a manager and the salary payable to a driver - as it is asserted that the deceased himself used to drive one of the three buses - would be the loss to the claimants. In the normal course the claimants are expected to adduce evidence as to what would be the quantum of depletion in the income from the abovementioned asset on account of the abovementioned factors. Unfortunately, no such evidence was led by the claimants.

> 12. In the circumstances, the judgment under Appeal cannot be sustained as the finding of the High Court that the claimants lost an amount of Rs. 16,000/- per month due to the death of Vijender Singh is neither based on any evidence nor the logic adopted by the High Court for arriving at such a conclusion is right. In the normal course, the matter should have been remitted to the Tribunal for further evidence for ascertaining of the basis upon which the compensation is to be determined. But having regard to the fact that the accident occurred a decade ago, we do not propose to remit the matter for further evidence."

5. In the aforesaid judgment, the Hon'ble Apex Court has held that the High Court has erred in calculating the loss of income, which the deceased was earning by running three Mini Buses, which are still running after the death of the deceased.

6. Learned counsel for the appellant/Insurance Company has further relied upon a judgment passed by the Hon'ble High Court of Orissa in the case of Manager Legal, Tata AIG General Vs. Usha Agarwal and Other, reported in 2023 Supreme (Online)(ORI)15183, wherein, claimant had filed the ITRs of her husband for the period before the death of his husband and also of the period after the death of her husband and after seeing the income mentioned in the ITRs, the Hon'ble Court held that there was no substantial difference in the income of the deceased on the basis of which the Hon'ble Court held that the source of income of the deceased as well as of the claimant is the same business entity, i.e. M/s

Ajanta Textiles, which is effectively managed by the widow to earn profits.

7. *Per contra*, Mr. Piyush Garg, learned counsel for respondent nos. 1 and 2 has relied upon a judgment passed by Hon'ble Apex Court in the case of K. Ramya and Others Vs. National Insurance Co. Ltd. and Another reported in 2022 LiveLaw (SC) 816, particularly, paragraphs 14, 16 17, 18 and 19 of the judgment, which are extracted hereunder for ready reference:-

> "14. In contrast, the High Court set aside the same on the ground that the income earned was out of capital assets and cannot be said to have been earned out of personal skills of the deceased. It consequently went on to determine the income of the Deceased on a notional basis as per his educational qualification. Unfortunately, such an approach, in our opinion, is erroneous in view of the decisions of this court in Amrit Bhanu Shali v. National Insurance Co. Ltd.10 and Kalpanaraj v. Tamil Nadu State Transport Corpn.11 wherein this court has held that documents such as income tax returns and audit reports are reliable evidence to determine the income of the deceased. Hence, we are obliged to modify the compensation, especially when neither any additional evidence has been produced to showcase that the income of the Deceased was contrary to the amount mentioned in the audit reports nor it is the stand taken by the Insurance Company that the said reports inflated the income.
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> 16. As per the audit report and other documents, the income under this part was attributable to the amounts earned from the deceased's multiple business ventures, which included the partnership firms and other investments such as shares and bank interests. On perusal of the documents on record, it is to be noticed that almost all business ventures were the result of the initiatives taken by the Deceased, and he was actively involved in the day-to-day management of these entities. In fact, the testimony of the Deceased's wife points out that the Appellants had to sell the buses which were utilized in the transport business because they were not able to take

care of the vehicles on account of the demise of the Deceased and even the export business was shut down due to the same reason.

17. The mere fact that the Deceased's share of ownership in these businesses ventures was transferred to the Deceased's minor children just before his death or to the dependents after his death is not a sufficient justification to conclude that the benefits of these businesses continue to accrue to his dependents. On the contrary, it has come on record that the Deceased was actively involved in the day-to-day administration of these businesses from their stage of infancy, had undergone specialized training to administer his business and that the audit reports neatly delineate Deceased's share of income from the businesses. These facts necessitate that the entire amount from the business ventures is treated as income. Similarly, the amount earned from the bank interests and remaining investments must also be included as income.

18. The Appellants have produced audit reports for the last four financial years which highlight the amounts under 'Income from Business Ventures and other Investments' which is as per follows – (i) for FY 2000-2001 is Rs. 8,95,812/- (ii) for FY 2001-2002 is Rs. 10,31,091/- (iii) for FY 2002-2003 is Rs. 14,65,060/- and (iv) for FY 2003-2004 is Rs. 9,79,099/-. The average of these amounts comes up to Rs. 10,92,765.50/-, which is rounded off to Rs. 10,93,000/- and the same is awarded to the Appellants as loss of income derived under 'Income from Business Ventures and other Investments'.

C.2.2 – Treatment of Income from House Property and Agricultural Land

19. As per the audit reports, the Deceased used to draw all his rental income from the share he held in a commercial building known as 'Lakshmi Complex' and the remaining income was from his agricultural lands, which have been bequeathed to his legal heirs on his death. The audit reports indicate the amounts under the 'Income from House Property and Agricultural Land' as per follows – (i) for FY 2000-2001 is Rs. 6,90,396/- (ii) for FY 2001-2002 is Rs. 6,47,127/-(iii) for FY 2002-2003 is Rs. 6,14,329/- and (iv) for FY 2003-2004 is Rs. 4,78,240/-. The average of these amounts comes up to Rs. 6,07,523/."

8. Heard learned counsel for the parties and perused the record.

9. After the death of the husband, the medical shop was closed, therefore, the contention of the appellant that the income from the medical shop would continue has no substance. The fact that the claimant has no income from the medical shop has come in the cross-examination, wherein, she has categorically stated that after the death of the husband, she has got a job and getting salary and beside that salary, there is no other income. This fact was not controverted by the Insurance Company.

10. In all these cases relied by learned counsel for the parties, the business of the deceased was continuing even after the death of the deceased and income from that business was being credited in the accounts of the claimants, thus, the claimants were getting the profits of the business, but, in the present case, facts are different, as it is an admitted case of the claimants that immediately after the deceased of her husband, medical shop was closed and there is no income from the medical shop. Therefore, the learned Tribunal has rightly appreciated the material on record while computing the income of the deceased and has rightly awarded loss of income in respect of the business, and, hence, this Court finds no illegality or perversity in the said finding.

11. Thus, this Court does not find any reason to interfere with the impugned judgment and award dated 28.09.2019 passed by Motor Accident Claim Tribunal.

12. Accordingly, the present Appeal from Order is liable to be dismissed and the same is hereby dismissed.

(Alok Mahra, J.)
14.11.2025

Ujjwal